

AIRGRAM

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HANDLING INDICATOR

TO :
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DEPARTMENT OF STATE
AMEMBASSY TOKYO
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PBOR, UN

FROM :

US Mission GENEVA

DATE: July 23, 1973

SUBJECT :

LOS: Archipelagos

REF :

GP/F

1. Group of Five met July 19 to discuss archipelagos at request of Japan. Attached is confidential discussion paper prepared by Japan. Ambassador Ogiso explained that the paper is designed for discussions in Group of Five, and is not intended for introduction. He expressed concern that in view of reference to archipelagos in OAU Declaration and other proposals, we should be better prepared to handle to issue.

2. In response to questions, Ambassador Ogiso confirmed that the regime for those parts of archipelagic waters used for international navigation (page 7, para 1) would be the same as the regime for straits, and that there was no need to review the substance of that at this meeting. While the reference to "parts...used for international navigation" implied certain routes, Japan deliberately left open the question of precise corridors for now. In response to our explanation of the difficulties of using length of line as the criterion for archipelagos, and Soviet (Barabolia) estimation that 150 miles might be an ultimate compromise between 100 and 200 miles, Ogiso suggested possibility of using both length of line and land/water ratio, or a smaller line.

3. Kovalov (USSR) questioned language of peace, good order and security; and said Japanese text was worse than innocent passage. It was again pointed out that substance of regime would be same as straits regime.

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4. On question of regime, Ogiso reiterated that substance of rights would be same as in straits. GOJ position on aircraft in straits also subject to uncertainty. Intent is not to exclude submerged passage. Beazley (UK) made point that regime within archipelago was more important as criteria for delimitation.

5. Oda explained that general theory is that regime of archipelagic waters is the same as territorial sea, but that where archipelagic waters are used for international navigation between two parts of the high seas, regime would be the same as in straits.

6. In response to tactical question, Ogiso noted that one problem is that GOJ concept on straits regime is different from US-Soviet concept, and this complicates Japan's ability to deal with issue. He wondered if US or USSR could pick up paper and substitute their straits regime.

7. Japanese recognized that their draft did not adequately deal with problems of fishing vessels and warships which do not necessarily follow customary trade routes.

8. All delegations participated in discussion of criteria for delineation of archipelagos (e.g., length of base lines, land to water ratios, and length to breadth ratios) with no conclusive results. Hodgson (US) and Cdr. Beazley (UK) will work up some tables of how various archipelagos would fare under the various criteria for discussion at a later group of five meeting.

9. USSR (Barabolia) can recognize some of the principles of archipelago States if archipelago States support USSR on regime of straits used for international navigation. Soviet delegation would agree to discuss problem only of archipelago States, not of coastal archipelagos: Hawaii, Franz Josef Land, Ryukyus. These islands each have their own territorial sea. Land/water ratio is difficult to determine. "Soviets don't think archipelago States would agree with this." Vital question is straight baselines. They cannot agree with very long baselines, e.g., 100 miles. Take average baselines customarily used now: 40-50 miles. If we agree with 100 miles, a great part of high seas will be included. Must also examine question of arrest of ships. Would not like Soviet ships easily arrested. Don't go further than Articles 19 and 20 of Territorial Sea Convention.

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There is no need for special provision for passage of fishing vessels. Thinks Fiji and Mauritius would agreed that remote islands would not be included, but he thinks there would be problems with Indonesia and the Philippines.

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The Problem of Archipelago

.(For discussion purposes only)

July 1973

1. It seems that the basic motive to establish a new regime for archipelago is the strong desire of these archipelagic states to affirm, among others, their political integrity and to strengthen a sense of their national cohesion.*)

In some interesting contrast with the concept of customary international law, in which the land territory is considered to be the single major component of a state, these states contend that not only the land, which in their case consists of numerous islands, but also the waters enclosed by a series of straight baselines connecting outermost points of outermost islands should be considered as a major components of archipelagic states (for convenience sake, hereinafter referred to as "archipelagic waters").

For the purpose of appraising the various implications of a _____

*) In this paper, attention is focused on a regime in which a group of islands constitute a "single archipelagic state". It should be noted in this connection that we may have to examine whether the principle of archipelago should be applied to a group of islands which constitute only a part of territory of a state and are separated from major component of that state.)

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regime on archipelago, it is considered appropriate to analyze the problem in three aspects:

- definition of the archipelago,
- implication with regard to resources in the archipelagic waters,
- implication with regard to passage through the archipelagic waters.

2. Definition of the archipelago

(1) The four-power draft (L.15) states that an archipelagic state is a state "whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically have or may have been regarded as such"

This vaguely worded formulation may suggest that the proponent states are reluctant to adopt any concrete criteria or limitations on the definition of what is an archipelago, such as the limitation of maximum length of straight baselines that may be drawn. They seem to prefer rather vague criteria with reference only to general ideas such as geographical, economic, political or historical factors, which criteria obviously are susceptible of wide application. One difficulty with this was illustrated by the U.K. expert at London meeting in May that the greater the distance between the component islands, or the more scattered the component islands are over a wide area, the stronger the desire would become to stress

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the political entity and to rely on the archipelagic theory.
(This might be particularly the case of Mauritius and Fiji.)

(2) However, it is obviously against the interest of the international community as a whole, if as a result of an open-ended definition wide areas of the high seas came under the sovereignty of some island states to an unjustifiable extent. It must be borne in mind the possibility in this context, that some day in future those small islands scattered in the Pacific region may acquire independence and claim archipelagic principle.

(3) We may therefore address ourselves to preventing the establishment of new regime whereby practically any island state regardless of the distance that separate its component islands, can claim itself as an archipelagic state. For that purpose, it is suggested that this Group should try to elaborate some specific criteria for the definition of an archipelagic state. In this connection, the group may wish to consider, for example, the acceptability of 100 miles as the maximum permissible distance for single straight baseline.

(4) If a limitation of 100 miles is adopted as a restrictive criterion in the above mentioned manner, then it would become difficult for Mauritius to claim for itself an archipelagic principle as its component islands are wide apart than would be justified. Under such a limitation it would become necessary for Indonesia, the Philippines, and Fiji to modify some of their presently

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claimed straight baselines which are longer than 100 miles, with a result that these countries would not be able to enclose all their respective islands in one single unit.

Still, even with such limitation, as far as Indonesia, the Philippines and Fiji are concerned, they will not be prevented from claiming themselves as archipelagic states without modifying to any substantial degree the presently claimed shape. And it may be argued that the claimed archipelago, in so far as the cases of these three countries can be acceptable, subject of course to further elaboration of the competence of archipelagic state in the archipelagic waters, particularly in relation to the question of passage. To put it in a more blunt manner, it may be the interest of this Group to elaborate some criteria such as suggested above which could somehow ~~satisfy these hard-core-of-archipelagic-states-but could~~ present any further claim by some other island states whose component islands are much more scattered and wide apart than those of these three states. To meet this purpose another suggested criterion may be to introduce limitation on the definition in relation to the ratio of the size of land territory to the size of water areas as a guideline.

(5) For information, the maximum length of straight baselines, and ratio of the size of land territory to the size of archipelagic water relevant to certain countries are given below:

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Indonesia

- a) maximum length: 124 nm (nautical mile)
- b) land territory: 1,880,000 km²
- c) archipelagic waters 2,860,000 km²
- d) b/c = 1/1.5

The Philippines

- a) maximum length: 141 nm*
- b) land territory: 300,000 km²
- c) archipelagic waters 500,000 km²
- d) b/c = 1/1.8

Fiji

- a) maximum length 107 nm*
- b) land territory: 1,400 km²
- c) archipelagic waters: 3,400 km²
- d) b/c = 1/2.4

Mauritius

data: not available. (Maximum length is supposed to be considerably longer than that of the above three.)

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3. Implication with regard to resources in the archipelagic waters

The four-power draft claim that all the resources within the archipelagic waters are subject to sovereignty of that archipelagic state. It seems difficult for this Group to accept such a claim. However, since argument against such an exclusive resources jurisdiction in the archipelagic waters may present the similar problem as the argument against the concept of the exclusive economic zone, any further reference to the resources aspect of the problem is avoided in this paper. It should be pointed out in this connection that if a regime of exclusive economic zone is established, then the problem of resources within the archipelago would virtually disappear, since the effect of an exclusive economic zone of, say, 200 miles would result in giving the archipelagic states all the resources within that limit any way. Assuming that an exclusive economic zone of 200 miles is adopted, the resources problems of an archipelago as such would arise only if distance between component islands would exceed 400 miles. But, as discussed above, the formation of such an archipelago should perhaps not be admitted.

4. Implication with regard to passage through archipelagic waters

(1) It seems that the impact on the question of passage through archipelagic waters deserves our most careful attention.

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It is stated in the four-power draft (L.15) that "innocent passage of foreign vessels through the waters of the archipelagic state shall be allowed in accordance with its national legislation, having regard to the existing rules of international law". We may get the impression that compared with the relevant articles on the innocent passage in the Territorial Sea Convention, the wording is a little modified in such a way as to place more emphasis on the competence of the archipelagic state over passage through its waters than is the case of the competence of coastal state with regard to innocent passage in its territorial sea.

The Group may find it impossible to accept such an idea. Therefore, the following formulation is introduced in this paper as an attempt to present a possible fall-back position of this Group.

1. In those parts of the archipelagic waters used for international navigation between one part of the high seas and the another part of the high seas, all ships shall enjoy a right of unimpeded passage for the purpose of transit, provided the ship does not use such waters for committing any act prejudicial to the peace, good order or security of the archipelagic state¹⁵ and in accordance with the following provisions:

(1) Ships on passage through archipelagic waters shall comply with, the laws and regulations enacted by the archipelagic state in conformity with these articles and other rules of international law and treaties in force regarding, inter alia,

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the safety of traffic and the prevention of pollution of the sea.

(2) Passage of ships in transit through archipelagic waters shall be continuous and expeditious. Ships on passage shall not engage in any activity other than mere passage.

(3) An archipelagic state shall have the right of enforcement over ships on passage with respect to violation of laws and regulations enacted by it. In cases of serious violation of its laws and regulations, that state may arrest any ship not complying with them, except a ship entitled to sovereign immunity under international law. If a ship enjoying sovereign immunity does not comply with such laws and regulations and disregards any request for compliance which is made to it, the archipelagic state may require the ship to leave.

2. In those parts of the archipelagic waters other than specified in 1. above, a regime of innocent passage in the territorial sea will be applied.